

strap, and wherein said binding strap member includes a buckle mounted thereto, said buckle being adapted to engage a second section of the engagement strap.

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72. The binding strap according to claim 71, wherein said buckle is a ratcheting buckle adapted to matingly engage with the engagement strap for incremental adjustment of said binding strap.

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73. The binding strap according to claim 72, wherein the first section of the engagement strap includes a plurality of serrations and wherein said buckle is adapted to adjustably engage with the plurality of serrations.

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84. The binding strap according to claim 70, wherein the binding includes an engagement strap adapted to be mounted to the binding base at a first section of the engagement strap, and wherein said binding strap member is adapted to releasably connect to the engagement strap.

REMARKS

In response to the Office Action mailed June 15, 2001, Applicants respectfully request reconsideration. Applicants thank Examiner Vanaman for his courtesy during the telephone interview on July 31, 2001. The substance of the interview is summarized below.

• Information Disclosure Statement

The Office Action indicates that the foreign and non-patent literature references cited in the Information Disclosure Statement filed on May 26, 2000 have not been considered due to the unavailability of the parent application.

As promised during our telephone interview, Applicants herewith submit a new Information Disclosure Statement together with copies of the cited references. Applicants request that the Examiner consider each of the references.

In addition, the Applicants wish to bring U.S. Application Serial No. 09/891,158 and U.S. Application Serial No. 09/611,068 (now U.S. Patent No. 6,224,070) to the attention of the

Examiner as being related applications. Accordingly, the enclosed Information Disclosure Statement includes this information as well.

Specification

The Office Action indicates that the disclosure is objected to because of various informalities. As such, on page 7, line 5, the Applicants have amended the term “riders” to “rider’s”. In addition, the Applicants have amended the specification to capitalize the trademarks “SLAP RATCHETTM” and “LEVERAGE TOE CLIPTM”. The specification has also been amended to recite the generic term for each of the above-noted trademarks. The Applicants have also updated the continuation data presented on page 1.

Claim Rejections-35 U.S.C. §112

Claims 71-73 and 84 are rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards and the invention. In particular, the Office Action indicates that the claims 71 and 84 are rejected because the claims from which these claims depend are directed to the subcombination of a binding strap whereas claims 71 and 84 appear to be directed to a combination including further elements associated with the binding.

As discussed during our telephone interview, the claims are directed to the subcombination of a binding strap. However, in claims 71-73 and 84, various features of the binding strap are being claimed in light of the environment or workpiece with which the binding strap operates. For example, in these claims, the workpiece (i.e. the binding) is described as including certain features (e.g. engagement strap, engagement strap having serrations, etc.) that the subcombination of the binding strap will interact with. The Examiner agreed with this analysis; however, he pointed out that amending the claims to recite that the features of the subcombination (binding strap) be “adapted to” work with the features of the combination (binding) would be preferable. Accordingly, claims 71-73 and 84 have been so amended.

Double Patenting

Claims 1-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 and 17-28 of U.S. Patent 6,056,300. The

Office Action indicates that a double patenting issue may also involve applications 08/780,485 and 09/062,968 but that the issue cannot be fully addressed because the applications are unavailable to the Examiner.

Without acceding to the propriety of the rejection, the Applicants herewith submit a terminal disclaimer for U.S. Patent 6,056,300.

As discussed during the telephone interview, the Applicants would submit terminal disclaimers for the above-noted related applications. However, also as discussed, U.S. Serial No. 09/062,968 is now abandoned and is replaced with U.S. Serial No. 09/611,068, which has now issued as U.S. Patent 6,224,070. Thus, Applicants herewith submit terminal disclaimers for U.S. Patent 6,224,070 and U.S. Serial No. 08/780,485 to resolve any potential double patenting issues.

Finally, as indicated above and in the enclosed Information Disclosure Statement, U.S. Serial No. 09/891,158 is a related application. Again, to obviate any potential double patenting issues, Applicants herewith submit a terminal disclaimer for this application as well.

Claim rejections-35 U.S.C. §102

Claim 85 is rejected under 35 U.S.C. §102(e) as being anticipated by Bumgarner. This rejection is traversed.

Bumgarner is directed to a snowboard binding including a conventional binding strap engageable with a ratchet strap. Like the prior art discussed with reference to Fig. 3 of the present application (see, e.g., page 7, lines 13-24), the binding strap 4 of Bumgarner includes a mounting strap portion (portion that mounts to the base 2 via fastener 14) and an integral padded strap portion (portion that extends up from the mounting strap and that will overlie the boot) that is engageable with grooves 42 of the ratchet strap via a ratchet buckle 41. The ratchet buckle cooperates with the ratchet strap such that the binding strap may be tightened in one direction but is prevented from being released in the opposite direction, as is typical with such a ratchet strap configuration.

Claim 85, on the other hand, is directed to a first strap component including means to engage a second strap component. The first strap component includes a first strap piece and a second strap piece. The first strap piece includes means to engage the second strap component. The second strap piece is movably mounted to the first strap piece. Either the first strap piece or

the second strap piece includes a plurality of mating features engageable with a mating feature on the other of the first and second strap pieces so as to prevent any relative lengthwise movement. An end of the second strap piece is inserted into the first strap piece.

In the Office Action, the ratchet strap is characterized as the second strap piece and the padded strap portion is characterized as the first strap piece because the Examiner states: 1) the ratchet strap is insertable into the buckle portion of the padded strap portion; and 2) the ratchet strap includes a plurality of mating features in the form of serrations. As a result of this characterization, it appears that the Office Action considers the ratchet strap and the padded strap portion of Bumgarner to be similar to the first and second strap pieces, which together form the first strap component of claim 85, and that the mounting strap portion of Bumgarner that is connectable to the base via fastener 14 to be similar to the second strap component as recited in claim 85.

It is respectfully submitted that, given this interpretation, Bumgarner fails to anticipate claim 85 for a number of reasons. First, as discussed during the telephone interview, due to the nature of ratchet straps, the ratchet strap of Bumgarner (the second strap piece) is able to move in one direction relative to the padded strap (the first strap piece) and not in the other. On the other hand, in claim 85, the first strap piece and the second strap piece are “secured against *any* relative lengthwise movement”.

Second, the ratchet strap and padded strap of Bumgarner, which together are considered in the Office Action to be similar to the first strap component, does not include “means to engage a second strap component”, which the Office Action considers to be similar to the mounting strap portion. Rather, the padded strap portion is integral with the mounting strap portion. This distinction is further highlighted by the fact that claim 85 includes the recitation, “a first strap piece that . . . includes the means for adjustably engaging the second strap component.” Bumgarner fails to teach the padded strap portion (the first strap piece) as having a means for adjustably engaging the mounting strap portion (the second strap component).

Even assuming, for the sake of argument, that the padded strap portion of Bumgarner is similar to the first strap piece of claim 85, that the mounting strap of Bumgarner is similar to the second strap piece of claim 85 and together make up the first strap component of claim 85 and finally that the ratchet strap of Bumgarner is similar to the second strap component of claim 85, then Bumgarner still fails to anticipate claim 85. In particular, given this interpretation of

Bumgarner, Bumgarner fails to teach the second strap piece (the mounting strap portion of Bumgarner) as being movably mounted to the first strap piece (the padded strap portion of Bumgarner). In addition, Bumgarner fails to teach an end of the second strap piece (the mounting strap of Bumgarner) being inserted through a portion of the first strap piece (the padded strap of Bumgarner). The reason Bumgarner fails to teach these two features is because the padded strap portion and the mounting strap portion of Bumgarner are integral.

Accordingly, it is respectfully submitted that Bumgarner fails to anticipate Claim 85 such that the rejection under 35 U.S.C. § 102(e) should be withdrawn.

Claim rejection 35 U.S.C. §103

Claims 1-29, 36-50, and 56-84 are rejected under 35 U.S.C. §103(a) as being unpatentable over Bumgarner in view of Pozzebon (4,624,064). The Office Action states that Bumgarner shows all of the claimed elements except for a strap portion being inserted into a pocket. Thus, the Office Action relies on Pozzebon for teaching a connection means including a strap end which is inserted into an element including an internal pocket, with the strap having a plurality of apertures including a connection device which engages with the apertures (through fastener rivets 31) and allows the strap to be repositioned. The Office Action concludes that it would have been obvious to one ordinary skill in the art at the time the invention was made to provide a pocket in the boot engaging strap portion of Bumgarner as suggested by the pocket connection taught by Pozzebon “for the purpose of concealing the strap portion 4 of Bumgarner, thus facilitating a more secure connection.” This rejection is traversed.

As discussed above, Bumgarner is directed to a snowboard binding including a conventional binding strap engageable with a ratchet strap. The binding strap includes a mounting strap portion and an integral padded strap portion that is engageable with the ratchet strap via a ratchet buckle. On the other hand, Pozzebon is directed to a hard-shell, rear-entry ski boot having an internal strap to pull a pressure pad over the instep of the skier’s foot. The boot includes a closure device disposed external to the boot that acts both to fasten the front and the rear leg portions together and to tighten the internal instep strap.

The Office Action fails to set forth a *prima facie* case of obviousness. One of ordinary skill in the art would not have been motivated to provide Bumgarner with the pocket of Pozzebon for a number of reasons.

First, nothing in the prior art of record supports the Examiner's conclusion (i.e., that it would have been obvious to provide a pocket of Pozzebon in the strap of Bumgarner "for the purpose of concealing the strap portion 4 of Bumgarner, thus facilitating a more secure connection") and the Examiner has pointed to no such teaching or suggestion in either Bumgarner, Pozzebon or any other prior art of record.

For example, it is respectfully submitted that one of ordinary skill in the art would not have been motivated to modify the strap of Bumgarner with the pocket of Pozzebon for the reason suggested because the motivation relied upon assumes that the strap of Bumgarner is somehow deficient by not concealing the strap and in the security with which strap ends are joined. Neither Bumgarner, Pozzebon nor any other prior art of record suggests this deficiency of the Bumgarner strap. Thus, one of ordinary skill in the art would not have been motivated to modify the strap of Bumgarner to conceal the strap and to provide a more secure connection as stated by the Examiner because there would have been no reason to do so. Because the Examiner has pointed to no discussion, teaching or suggestion of this deficiency, the rejection appears to be based on alleged common knowledge in the art or "well-known" prior art, pursuant to MPEP §2144.03.

If the rejection of the claims as being obvious over Bumgarner in view of Pozzebon is to be maintained, the Examiner is respectfully requested to cite to a reference (preferably to the column or page number and line number) in support of this position as required under MPEP §2144.03, or if the Examiner is relying upon facts within his personal knowledge, to file an affidavit establishing those facts pursuant to §2144.03. As stated in that MPEP section, the reliance upon facts that are purportedly common knowledge or "well-known" should only be relied upon for facts that "fill the gaps" in the factual showing of obviousness and "should not comprise the principle evidence upon which a rejection is based". Here, the Examiner's entire motivation for modifying the strap of Bumgarner based upon Pozzebon to employ a pocket is without foundation in the prior art of record, which is respectfully believed to render the rejection improper under MPEP §2144.03.

Second, Pozzebon utilizes an internal strap to secure an instep pad over the foot of the skier. To tighten the internal strap, Pozzebon teaches a closure device that is mounted on the outside of the boot. Pozzebon is not at all concerned with concealing the strap, as suggested by the Examiner. Rather, Pozzebon teaches an internal strap (which is necessary to engage the

internal instep pad 6). A pocket is not provided to conceal the strap, as the strap by definition must be internal in order to position the pad relative to the instep. Rather, the “pocket” is necessary to access the strap so that it may be tightened. Thus, it is respectfully submitted that Pozzebon does not teach the use of a pocket to “conceal the strap” as stated in the Office Action.

Third, Bumgarner teaches a unitary strap piece including a padded strap portion and a mounting strap portion, which together engage with the ratchet strap. One of ordinary skill in the art would not have been motivated to add a pocket as taught by Pozzebon. In this respect, the Examiner states that one of skill in the art would have been motivated to modify Bumgarner with the addition of the pocket to conceal the mounting strap. Because the padded strap portion and mounting strap portion are integral, there would have been no reason to add a pocket because there is no portion of the Bumgarner mounting strap that needs to be concealed.

In addition, the prior art references, when combined, must teach or suggest all the claim limitations. In its broadest sense, the present application is directed to an adjustable length strap. This may be accomplished with the use of a strap having a pocket, as in claims 1 and 13, that is configured and arranged to movably receive an end of a mounting strap. Thus, even if one were motivated to modify Bumgarner with a pocket of Pozzebon, such a modification must result in the mounting strap of Bumgarner being *movably received* in the pocket. Nothing in the prior art suggests this result. Rather, Bumgarner teaches a unitary strap piece including a padded strap portion and a mounting strap end, which together engage with the ratchet strap. Because the padded strap portion and mounting strap portion are integral, simply adding a pocket on the padded strap portion would not result in the end of the mounting strap being *movably received* within the pocket.

It should be noted that independent claims 23, 36, 56 and 70 do not require a pocket. However, the Office Action fails to articulate any reason why these claims are rendered obvious over Bumgarner in view of Pozzebon. In any event, given that the prior art references, when combined, must teach or suggest all the claim limitations, it is respectfully submitted that the resulting combination fails to render obvious a binding strap and a mounting strap movable relative to each other, as claimed in claims 23, 36, 56 and 70.

In view of the foregoing, it is respectfully asserted that the Office Action does not set forth a *prima facie* case of obviousness, as there is nothing in the prior art of record to provide

the alleged motivation relied upon by the Examiner for combining the references. Therefore, the rejection of claims 1-29, 36-50, and 56-84 under 35 U.S.C. §103(a) should be withdrawn.

CONCLUSION

In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted
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MARKED-UP SPECIFICATION

Please rewrite the paragraph beginning at page 1, line 4 as shown.

This application is a continuation of application serial no. 09/062,968, filed April 20, 1998 entitled, "Adjustable Binding Strap for Securing A Snowboard Boot Within A Baseplate," [and now pending] abandoned, which is a continuation of application serial no. 08/886,917, filed July 2, 1997, entitled, "Adjustable Binding Strap for Securing A Snowboard Boot Within A Baseplate," [and now pending] now U.S. 6,056,300, which is a continuation of application of serial no. 08/780,485, filed January 8, 1997, entitled, "Unitary Strap For Use in A Soft Boot Snowboard Binding", now pending.

Please rewrite the paragraph beginning at page 1, line 28 as shown.

Conventional soft boot bindings come in either a two or three strap arrangement comprising an ankle strap, a toe strap and, in the three strap arrangement, a shin strap. The ankle strap may include an oblong strap member which has a first end with a number of holes to adjustably attach the strap to the sidewall of the baseplate by a nut and bolt combination which is received through the appropriate hole adjacent the instep of the boot. The second end of the ankle strap typically includes a ratchet buckle, such as the [Slap Ratchet TM] SLAP RATCHETTM buckle available from Burton Snowboards of Burlington VT, which matingly engages a toothed or serrated strap mounted to the sidewall of the baseplate adjacent the outer side of the boot. The Slap Ratchet buckle and serrated strap allow for incremental adjustment once the ankle strap is secured around the boot. Likewise, the toe strap also typically includes an oblong strap member which has a first end with a number of holes to adjustably attach the strap to the sidewall of the baseplate by a nut and bolt combination which is received through the appropriate hole adjacent the "big" toe of the rider. The second end of the toe strap also typically includes a clip, such as a [Leverage Toe ClipTM] LEVERAGE TOE CLIPTM available from Burton Snowboards, which mates with a serrated strap mounted to the sidewall of the baseplate adjacent the "little" or "pinkie" toe of the foot for incremental adjustment of the toe strap. The shin strap, when utilized, is typically mounted at a first end to the high-back portion of the binding by a fastener, such as a nut and bolt combination, and includes a ratchet buckle which matingly engages a toothed or serrated strap mounted to the sidewall high-back, adjacent the outer shin. Such soft

boot bindings are available from Burton Snowboards, of Burlington, VT, and include for example, the X2, Custom Freestyle, Freestyle, Freestyle XS, System, Lo-Back and Contact models.

Please rewrite the paragraph at beginning at page 6, line 21 as shown.

As shown in Figs. 1, 2 and 4A, mounting strap 28 includes a plurality of holes 32 disposed substantially along the length of the strap, to allow for adjustment of the ankle section over the boot 11 of the user. As is conventional, the baseplate 13 includes a number of holes 35 so that the ankle section 18 may be properly located over the ankle area for a variety of riders. A first end of the mounting strap 28 is preferably secured to the inside of baseplate 13 along the back portion 29 by fastener 31. In the present embodiment, fastener 31 comprises a nut and bolt, although other fastening devices will be known to one of skill in the art. A second end of the mounting strap 28 is preferably inserted through a slit 33 cut into the inside portion of ankle section 18 and into a pocket 34 formed internally within binding member 16. In use, after the first end of the mounting strap 28 is fastened to the back portion 29 of the baseplate, the rider inserts the second end through slit 33 and into pocket 34. The rider may then adjust the second end of the strap to suit his or her own preferences by moving a length of mounting strap 28 into the pocket to attain the desired fit. The rider can then secure the second end of mounting strap 28 inside the pocket 34 by using a fastener, such as screw 36, which engages one of the plurality of holes 32 to hold the mounting strap 28 in place. The adjustable mounting strap 28 allows a rider to make a first adjustment of the ankle section 18 of the binding strap depending upon the size of the [riders] rider's boot and/or the desired tension on the ankle portion of the rider's foot. In the present embodiment, mounting strap 28 is made of plastic material, although any material which can securely attach the binding to the baseplate, while providing for adjustable positions, such as by holes, may be utilized. The use of pocket 34 in the present embodiment decreases the thickness associated with multiple layers of material, as the mounting strap 18 is received within binding member 16. The pocket 34 provides extra comfort because the thickness of the strap is not increased and a cushioning layer exists between the strap 28 and the boot of the rider.

Please rewrite the paragraph at beginning at page 7, line 25 as shown.

With continued reference to Figs. 1 and 4A, ankle section 18 is releasably secured over boot 11 by engagement member 30, which can be a ratcheting buckle and strap. In the present embodiment, engagement member 30 includes a [Slap Ratchet™ buckle 38] buckle 38, such as the SLAP RATCHET™ buckle, available from Burton Snowboards of Burlington, VT, mounted to the outer side 27 of ankle section 18 and a serrated strap 40, mounted to the outer sidewall 42 of baseplate 13, by a fastener, for example a nut and bolt. Outer side 27 of ankle section 18 is preferably rounded so as to provide a comfortable fit by avoiding sharp edges which may tend to cut into the ankle or foot of the rider. Serrated strap 40 matingly engages slap ratchet 38 for incremental adjustment of binding strap 12 about the ankle section 18, as is known in the art. Engagement of strap 40 with Slap Ratchet 38 preferably occurs after mounting strap 28 is secured to the inside of baseplate 13, as described hereinabove.

Please rewrite the paragraph at beginning at page 8, line 28 as shown.

As described with reference to ankle section 18, toe section 22 is likewise secured to baseplate 13 by a mounting strap 48, attached to the inside of the baseplate, and is releasably secured over boot 11 by an engagement member 50 and toe strap 52, the toe strap being secured to the outer side of the baseplate. When secured to the baseplate 13, toe section 22 may be generally parallel to the bottom of baseplate 13. In the present embodiment, the structure and function of mounting strap 48 is similar to mounting strap 28, provided, however, that mounting strap 48 is preferably shorter in length than strap 28 and is secured to the inner sidewall of baseplate 13 adjacent the ball of a rider's foot. As shown in Fig. 1, a [Leverage Toe™ clip 54] clip 54, such as the LEVERAGE TOE™ clip, available from Burton Snowboards of Burlington, VT, is preferably mounted to the outer side 56 of toe section 22 for adjustable engagement with a serrated strap 58 extending from ratchet buckle 60. Ratchet buckle 60 may preferably be utilized with clip 54 because the buckle allows the user to more tightly adjust or "crank down" binding 12 along the toe region, or front of a rider's foot, thus providing a more secure and comfortable fit than by using a traditional leverage clip alone. In the present embodiment, ratchet buckle 60 is mounted to one end of toe strap 52, the toe strap being fastened at a second end to the outer sidewall of baseplate 13, adjacent the ball of the rider's foot, by any suitable conventional fastener, for example a nut and bolt. Alternately, a leverage toe clip and serrated strap may be

utilized as illustrated in Fig. 7, with toe section 22 preferably extending over the first through fifth metatarsal bones in this embodiment.

MARKED-UP CLAIMS

71. (Amended) The binding strap according to claim 70, wherein the binding includes an engagement strap adapted to be mounted to the binding base at a first section of the engagement strap, and wherein said binding strap member includes a buckle mounted thereto, said buckle being [configured and arranged] adapted to engage a second section of [an] the engagement strap.

72. (Amended) The binding strap according to claim 71, wherein said buckle is a ratcheting buckle [which matingly engages] adapted to matingly engage with the engagement strap for incremental adjustment of said binding strap.

73. (Amended) The binding strap according to claim 72, wherein the first section of the engagement strap includes a plurality of serrations and wherein said buckle is adapted to adjustably [engagable] engage with the plurality of serrations.

84. (Amended) The binding strap according to claim 70, wherein the binding includes an engagement strap adapted to be mounted to the binding base at a first section of the engagement strap, and wherein said binding strap member is adapted to releasably connect [releasably connectable] to the engagement strap.